IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

IN RE LAWN MOWER ENGINE HORSEPOWER MARKETING AND SALES PRACTICES LITIGATION	MDL No. 1999 2:08-md-01999 **THOMAS L. COX, JR'S AMENDED OBJECTION TO CLASS NOTIFICATION, OBJECTION TO PROPOSED SETTLEMENT, OBJECTION TO ATTORNEYS' FEES REQUEST, NOTICE OF INTENTION TO APPEAR, AND REQUEST TO SPEAK AT THE HEARING**

To The Honorable District Judge:

Comes Thomas L. Cox, Jr. ("Objector"), and files these Amended Objections to the Proposed Settlement, Objection to Class Notification, Objection to Attorneys' Fees, Notice of Intent to Appear and Request to Speak at the Hearing, and would show as follows:

1. Objector is a class member

Objector declares that the following statements are true and correct:

(a) I am a member of the class.

(b) I purchased a Murray Select 22" Convertible Mulcher from Home Depot.

(c) I did not receive personal postcard notice of this action. I do not recall exactly when I purchased the mower, but I still own it and the materials/manual/warranty is dated as effective July 1, 2000, by Briggs & Stratton. I have attached the materials/manual/warranty as Exhibit "1." Although it is difficult to read, contrary to Plaintiff's claims, the model appears to be 12H02, Type 3190-B1 and Code is 00102D56. The product was a Murray Mower, SKU #597-805.

(d) I object to the Settlement in this case, and I specifically object to each of the five individual settlements.

(e) The Settlement is not fair, reasonable, or adequate for Class Members.

(f) In Objector's initial objection, the right to further comment was reserved and Objector was furnished with Document 174; Memorandum in Support of Plaintiff's Motion for Preliminary Approval and Document 203, Memorandum in Support of Kohler Settlement by email from Jackson Bigham of Morrison Fenske and Sund after the initial Objection was filed.

2. Objection to Class Notice

The proposed notice plan does not meet the requirements of Fed.R.Civ.P.23 (c)(2) as the best notice practicable under the circumstances. While it is certainly true that Fed. R. Civ. P. 23 does not require the parties to exhaust every conceivable method of identifying the individual class members. It is also true that where class members' names and addresses cannot be determined by reasonable efforts, notification by publication will suffice. However, here the plan fails and could be improved. The total number of mowers sold during the period is placed at 68 million and the defendants have provided information as to the identity of some 30 million individuals who purchased mowers since 1994. According to Plaintiffs, the settlement administration[1] system can identify and exclude invalid and blank address records and duplicates. However, the fact remains that many class members will have moved many times since 1994. Postcard notices will reach some, but by no means a majority of class members. Therefore, it is necessary to carefully review the proposed publication notice.

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[1] Rust Consulting

To reach most class members a “Campaign for Publication Notice” is being developed by Kinsella Media and while the plan is commendable for the use of the Hispanic Media, the notice campaign could be improved by the following:

1) links on each settling defendant’s website to the settlement website;

2) banner notices on each settling defendant’s website of the settlement;

3) requiring Notice to be posted in the retail outlets or franchise dealers of all settling defendants;

4) requiring Notice to be posted at all independent repair shops who service the settling defendants products[2];

5) A press release detailing the settlement to be sent out by PR Newswire in both English and Spanish;

6) Follow-up media calls concerning the press release in the top fifty media markets, concerning the press release.

The goal of the Kinsella Media campaign for publication notice should be to actually reach class members for which there will be no postcard notice and not merely meet minimum legal requirements. While the Kinsella Media affidavit makes note of the “reach” and “frequency” of their campaign, the question still remains how many people actually read the notice in Parade, People or the other magazines to be used. The steps recommended above are simple and would improve the notice plan with little or any cost and would ensure greater notice to class members.

[2] Plaintiff in their memorandum in support of the settlement, page 28, estimate 7000 Kawasaki shops, Briggs 6700 and Toro 4,000.

3. Objections to the Settlement

The settlement is not fair, reasonable or adequate and Objector objects to the proposed settlement for the following reasons:

The defendants have records of 30 million class members that purchased a mower during the settlement period. These , that class member should not have to file a claim to obtain an extended warranty. The settling defendants should simply extend the warranty for a period of one year regardless of whether or not the class member files a claim.

The cash value of settlement has been placed at 65 million yet the value of the warranty is disputed and is valued by Plaintiffs at 1.75 billion but that value assumes a cash value for the warranty for each of the 68 million mowers sold but he value is really substantially less because warranty benefits will be determined by actual payments and a class member has to file a claim to obtain the warranty. Clearly far fewer claims will be filed. While the value of the settlement to class members can be "up to $35 for each walk behind mower" and "up to $75 for each riding mower," the payment to each class member is likely to be substantially less. The total number of mowers sold during the period is 68 million. How widely the settlement is publicized will affect the number of claims submitted, yet the notice plan is insufficient and could be easily improved.

If Plaintiff's case is as strong as they seem to believe, it appears that the case is being settled for far less than its actual cash value and the extended warranty provisions look and smell like a coupon settlement. Few class members will actually receive a warranty benefit.

Provision should be made for a *Cy Pres* distribution of uncashed settlement checks as the actual check is likely to be substantially smaller than the "up to" amount in the settlement.

The amount of the proposed fees in relation to the probable actual benefits to the class renders the settlement unfair and unreasonable. The amount of the proposed attorneys' fees is an integral element in determining whether the settlement is fair, reasonable, and adequate:

> The court's settlement review should include provisions for the payment of Class Counsel. In class actions whose primary objective is to recover money damages, settlements may be negotiated on the basis of a lump sum that covers both class claims and attorney fees. Although there is no bar to such arrangements, the simultaneous negotiation of class relief and attorney fees creates a potential conflict … The judge can condition approval of the settlement on a separate review of the proposed attorneys' compensation.

MANUAL FOR COMPLEX LITIGATION 4th § 21.7, p. 335.

4. Objections to the Fee Petition

Objector objects to the request for fees to Class Counsel. Objector reserves the right to file further objections to the fee petition at a later date because as of today, the only document available is the affidavit of Vincent J. Esades which simply alleges that 21,193 attorney hours were consumed and expenses of $479,721.89 were paid.

Class counsel may seek up to one-third (1/3) of the cash value of the settlement as fees, 14 million plus expenses. This amount is excessive and should be reduced, using the Lodestar method simple division gives us an hourly fee of $660 without a multiplier which is clearly excessive.

While calculating fees based on a percentage of total recovery, the Seventh Circuit has indicated that sliding scales should be considered. The court should reduce the requested fees.

5. Objector Incorporates by Reference any Proper Objections Filed by Other Objectors Herein.

Wherefore, Objector prays that the Court deny the proposed settlement, deny the requested fees to Class Counsel and grant Objector such other and further relief as to which Objector may be entitled.

/s/

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Dated: June 4, 2010

Certificate of Service

I hereby certify that a copy of the above and foregoing document has been served upon the following on the 4th day of June, 2010:

Vincent J. Esades
Heins Mills & Olson, P.L.C.
310 Clifton Avenue
Minneapolis, MN 55403

And by USPS delivery and ECF filing to:

Clerk of the Court
United States District Court
Eastern District of Wisconsin
Milwaukee Division
362 United States Courthouse
517 East Wisconsin Avenue
Milwaukee, WI 53202

/s/
Thomas L. Cox, Jr.